IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil application No. 2990 of 2005
in
Writ Petition No. 4730 of 2004

1. Sailesh G.Advani
and another ..Applicants

vs.

Lekhraj G.Advani ..Respondent

Shri K.S.Mishra for applicants. (absent)
Shri Y.N.Adiya for respondent.

CORAM: S.B.MHASE J.
31st March, 2006

P.C.

1. This is the civil application to restore writ petition no.4730 of 2004 which was dismissed for non prosecution since the counsel was absent. The said order was passed on 30th September, 2004. The learned Counsel for the applicant is also absent today. Learned Counsel for the respondent is present. He states that the original writ petition was directed against the order dated 6th March, 2004. That was the order passed on the preliminary issues namely whether the suit is properly valued and whether the Court has pecuniary jurisdiction to try and decide the suit. The learned counsel for the respondent states that during the pendency of this matter and the civil application by judgment and order dated 22nd June, 2005 the suit is decreed in

favour of the respondent and he produces the xerox copy of the certified copy of the judgment and decree passed by the City Civil Court in S.C.Suit No.1358 of 2003 and submitted that in view of this nothing survives in the main petition and, therefore, the civil application for restoration of the writ petition which was dismissed for non prosecution is not tenable and for that cause probably the learned counsel for the applicants is not remaining present and prosecuting the matter. Statement made by the learned counsel for the respondent is accepted. In view of the xerox copy of the judgment and decree passed on 22nd June, 2005 produced on record nothing survives in the civil application and the same is rejected.

(S.B.MHASE J.)